IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 22ND FEBRUARY 2005 / 3RD PHALGUNA 1926

RP.No. 995 of 2005(G)

AGAINST THE JUDGEMENT IN WPC.17284/2005 Dated 17/06/2005

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PETITIONER/1ST RESPONDENT

KERALA FINANCIAL CORPORATION,
REPRESENTED BY ITS CHIEF MANAGER,
BRANCH OFFICE, VELLAYAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN

RESPONDENTS: PETITIONER/2ND RESPONDENT:

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1. G.LALKUMAR,
CHITTAMKONATHU VEEDU, CHEUVIKAL VILLAGE,
SREEKARYAM P.O., THIRUVANANTHAPURAM.

2. RITA ALOYSIUS MIRANDA,
M.MC-26, KATTIL HOUSE, KUNNATHALAMOODU,
KAYAMKULAM P.O., ALAPPUZHA.

BY ADV. SRI.J.HARIKUMAR
SRI.HARI KUMAR.S.
SRI.VIPIN VISWANATH
SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.M.R.ANANDAKUTTAN
SRI.B.SATHIQ
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M. JAMES, J.

R.P.No. 995 OF 2005 in W.P.(C) No.17284/2005

Dated this the 22nd February, 2007.

O R D E R

The review petitioner is a financial corporation. The second respondent herein had obtained a loan from the review petitioner. The property belonging to her was mortgaged with the review petitioner, at the time of the receipt of the loan amount. When there was default, the said property was proceeded against under Section 29 of the State Financial Corporations Act, 1959. At that time, the review petitioner had understood that the first respondent had obtained money decree in O.S.No.1570/99, against the husband, as well as on the second respondent herein. In execution of the decree in the said Original Suit, the first respondent had purchased the property belonging to the second respondent, through the court auction. It was at that time that the review petitioner filed O.S.No.154/2004, praying to declare that the decree passed in O.S.No.1570/99, and all the proceedings thereon, basing on the ex parte decree in that suit, will not be binding on the right of the review petitioner in proceeding with the property of the second respondent.

2. The written statement was not filed within the prescribed period. Therefore, the first respondent came up before this Court preferring Writ Petition, W.P.(C) No.17284/2005, to set aside Ext.P5 order therein, and to accept Ext.P3 written statement, by allowing Ext.P2 petition filed for the same. Through my judgment, dated 17.6.2005, the said prayer was allowed. It is now submitted before me that as per the direction of this Court, the written statement has been accepted, and O.S.No.154/2004 is pending for further steps.

3. In the same judgment in the writ petition, I have also directed the parties to maintain status quo, and there was another direction to the writ petitioner, the first respondent in this review petition, not to alienate the property, in any manner, till the Civil Court decides the question raised by both sides.

4. The review petitioner is before this Court stating that even at the time of the passing of the judgment in the writ petition, the property obtained through court auction by the first respondent herein, was alienated through a third party, and that fact was not brought to the notice of this Court, and the same was not taken as a ground or contention in the written statement filed in

O.S.No.154/2004. Counsel for the review petitioner, therefore, contend that the direction of maintaining a status quo was ordered, on the presumption that the property obtained by him from the second respondent, through court auction was in his possession and enjoyment. Whereas, the said property was alienated to the third party, even at the time of the writ petition, and even prior to the filing of the written statement before the court below, in O.S.No.154/2004. Hence, the review petitioner pray that the judgment in the writ petition may be reviewed and appropriate directions may be passed.

5. I have heard the learned counsel appearing for the first respondent. I have gone through the entire facts. The third party who purchased the property from the first respondent, the writ petitioner, is not before me. However, the learned counsel, Sri.L.Mohanan, appearing for the review petitioner, submits that more than Rupees Eleven Lakhs borrowed by the second respondent had not been repaid, and because of the fraudulent action of the respondents, as well as the third party, at the instance of the respondents, the review petitioner is being deprived of the right to proceed against the property mortgaged with the review petitioner, prior in time than the proceedings in O.S.No.1570/99.

6. The contention of the review petitioner that the property obtained by the first respondent herein had been transferred to the third party is not disputed by the first respondent. In such circumstances, for clarity of decision, it is necessary that he is also brought into the party array in O.S.No.154/2004, although the transfer of property during the by pendente lite would bind the parties thereto. The learned counsel for the review petitioner further submits that he would proceed against the respondent in restraining them from further alienating the property, in the appropriate manner, but seeks for an interim injunction from this Court till such time.

7. In view of the above submissions and the facts that are placed before me, and in modification of the judgment, dated 17.6.2005, in W.P.(C) No.17284/2005, I dispose of the review petition as follows:-

(i) The learned Principal Sub Judge, Thiruvananthapuram, before whom O.S.No.154/2004, is pending, shall consider and pass an order in an application for injunction, that would be filed, praying for, an injunction restraining all other alienations and

changing of the character, nature and lie of the property, covered under the mortgage by the second respondent with the review petitioner, after hearing all concerned. Such an application shall be filed within 10 days from the date of receipt of a copy of this order.

(ii) The Principal Sub Judge, Thiruvananthapuram, shall dispose of the suit, at the earliest, and in any case, within six months from the date of production of a copy of this Order.

(iii) The impleading applications, if any, filed shall also be disposed of without any delay, on merit.

The review petition is disposed of as above.

J.M. JAMES,
JUDGE

nj.